Exhibit A to Plea Agreement with Hapoalim (Switzerland) Ltd.

STATEMENT OF FACTS

The following Statement of Facts is incorporated by reference as part of the Plea Agreement between the United States Attorney's Office for the Southern District of New York ("USAO"), the Tax Division of the Department of Justice (with the USAO, the "Department"), and Hapoalim (Switzerland) Ltd., a subsidiary of Bank Hapoalim B.M. ("BHS" and, together with Bank Hapoalim B.M. and its subsidiaries, branches, representative offices, and predecessors in interest, the "Bank"). The parties agree and stipulate that the following is true and accurate:

I. OVERVIEW

BHS (formerly Bank Hapoalim (Switzerland) Ltd.) is a Swiss banking institution and a wholly owned subsidiary of Israel-based Bank Hapoalim B.M. ("BHBM"). Established in 1975, BHS primarily provided private banking services and is regulated by the Swiss Financial Market Supervisory Authority. BHS is headquartered in Zurich and has a branch in Luxembourg ("BHS-Luxembourg"), which is regulated by the Commission de Surveillance du Secteur Financier. BHS-Luxembourg shares its office, electronic systems, and certain employees with Bank Hapoalim (Luxembourg) SA ("BHL"), a wholly owned subsidiary of BHBM operating under the laws of Luxembourg, which primarily offers commercial banking services. From 1991 to 2017, BHS had a branch in Geneva (together with the Zurich headquarters, "BHS-Switzerland"). From 2007 through May 2013, BHS also had a branch in Singapore ("BHS-Singapore") regulated by the Monetary Authority of Singapore. At times during 2002 through 2014 (the "Relevant Period"), BHS also had representative offices in Israel, Hong Kong, Mexico, and Moscow. In 2017, BHBM announced it was terminating BHS's operations in order to minimize overall compliance risks. In November 2018, BHS sold most of its assets and is now in the process of winding down.

The BHS Board of Directors was a fully operational board that made its own decisions, and BHBM generally did not have direct involvement in the day-to-day operations and account activity at BHS. Nevertheless, BHBM executives served on the BHS Board of Directors and BHBM was significantly involved in important policy, budget, and strategy decisions as BHS's parent company. For example, after BHBM adopted a group-wide compliance policy in or around 2011, BHS was required to adopt the policy subject to local law restrictions. The Chief Executive Officer of BHS also reported formally to the BHS Board of Directors, the chair of which was typically the head of BHBM's International Division. In addition, BHS provided periodic compliance, risk management, credit, and audit reports to the BHBM International Division and other appropriate BHBM units, subject to local secrecy laws as interpreted and implemented by BHS employees. Local secrecy laws did not prevent BHBM from receiving sufficient information to adequately supervise BHS generally, as BHBM could receive information that did not reveal client-specific material. However, the process to obtain client-specific information was cumbersome due to Swiss legal restrictions. To the extent BHBM personnel needed such client-specific information, they could receive it in Switzerland or Luxembourg after signing a non-disclosure agreement.

BHS maintained a subsidiary called Trinel Ltd., located at BHS's premises in Zurich, which is currently in liquidation. Trinel was used for several purposes over the course of time, including as a trust company, to facilitate investments and real estate transactions, and, on a limited basis, to facilitate client transactions. Prior to November 2010, BHS also maintained a subsidiary, Hapoalim Fiduciary Services Limited ("Hapoalim Fiduciary"), formerly known as Hapoalim Trustees Limited and later known as BHI Trust Company, which was based in the Bailiwick of Jersey and provided trust services to BHS clients. Hapoalim Fiduciary was regulated by the Jersey Financial Services Commission. In November 2010, BHS sold its interest in Hapoalim Fiduciary to a third-party asset management company that previously had managed and owned a small stake in Hapoalim Fiduciary. BHS also acted as a custodian of assets that were managed by Hapoalim Fiduciary and other third-party investment advisors primarily based in Europe and Israel, including assets beneficially owned and controlled by citizens and residents of the United States ("U.S. taxpayers"). During the Relevant Period, the maximum total of assets under management for BHS-Switzerland was approximately $6.7 billion, and for BHS-Luxembourg it was $5.5 billion. The highest number of employees at BHS was 213 in 2010.

BHS provided private banking and asset management services to U.S. taxpayers and assisted certain of those U.S. taxpayers to evade their U.S. tax obligations, file false federal tax returns with the Internal Revenue Service (the "IRS"), and otherwise hide accounts held at BHS from the IRS. BHS, including certain of its senior officers and at least two of its then-board members, assisted such customers in a number of ways, including by opening and maintaining undeclared accounts[1] for U.S. taxpayers at BHS and providing a variety of offshore private banking services that assisted U.S. clients in the concealment of their assets and income from the IRS. These services, which are described in further detail below, included, among others, opening and maintaining accounts using code names, numbers, offshore entities, and trusts; facilitating the creation of offshore entities; issuing loans that provided U.S. taxpayers access to undeclared funds held in offshore accounts while continuing to conceal their assets; opening and maintaining accounts for known U.S. clients using non-U.S. forms of identification; opening and maintaining insurance wrapper accounts for U.S. clients held in the names of insurance companies; processing wire transfers and issuing checks in amounts of less than $10,000 to avoid scrutiny; and holding all correspondence for some clients at BHS in order to avoid any correspondence being sent to the United States.

In total, during the Relevant Period, BHS held 2,055 U.S. Penalty Accounts.[2] Those U.S. Penalty Accounts had an aggregate maximum total of approximately $4.4 billion in assets under management, which consisted of approximately 22 percent of BHS's maximum total assets

[1] An "undeclared account" was a financial account beneficially owned by an individual subject to U.S. tax obligations and maintained in a foreign country that had not been reported by the individual account owner to the U.S. Government on an income tax return or an FBAR.

[2] "U.S. Penalty Accounts" are defined as U.S. accounts valued over $50,000 that the parties agree should be subject to a penalty for the offense conduct.

under management during the Relevant Period. BHS earned gross fees of approximately $125 million from U.S. Penalty Accounts.

BHS was responsible under U.S. law for the acts and omissions of its employees as described in this Statement of Facts.

II. U.S. INCOME TAX AND REPORTING OBLIGATIONS

U.S. citizens, resident aliens, and legal permanent residents have an obligation to report all income earned from foreign bank accounts on their tax returns and to pay the taxes due on that income. For the tax year 1976 forward, U.S. citizens, resident aliens, and legal permanent residents had an obligation to report to the IRS on the Schedule B of a U.S. Individual Income Tax Return, Form 1040, whether that individual had a financial interest in, or signature authority over, a financial account in a foreign country in a particular year by checking "Yes" or "No" in the appropriate box and identifying the country where the account was maintained.

Since 1970, U.S. citizens, resident aliens, and legal permanent residents who have had a financial interest in, or signature authority over, one or more financial accounts in a foreign country with an aggregate value of more than $10,000 at any time during a particular year have been required to file with the U.S. Department of the Treasury a Report of Foreign Bank and Financial Accounts, FinCEN Form 114, formerly known as Form TD F 90-22.1 (the "FBAR"). The FBAR for the applicable year during the Relevant Period was due on June 30 of the following year.

An IRS Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting, was used by a non-U.S. person to establish foreign status and beneficial ownership, and to claim the benefits of exemption or reduction of tax withholding as a resident of a foreign country with which the United States has an income tax treaty. U.S. citizens and U.S. residents were not eligible to file Forms W-8BEN.

An IRS Form W-9, Request for Taxpayer Identification Number and Certification, was used by a U.S. person to provide a correct Taxpayer Identification Number to a financial institution required to report to the IRS interest, dividends, and other income earned.

Since 1935, Switzerland has maintained criminal laws that ensure the secrecy of client relationships at Swiss banks. Similarly, Luxembourg has maintained criminal laws that ensure the secrecy of client relationships at Luxembourgish banks since at least 1993. While Swiss and Luxembourgish law permit the exchange of information in response to administrative requests made pursuant to a tax treaty with the United States and certain legal requests in cases of tax fraud, Swiss and Luxembourgish law otherwise prohibits the disclosure of identifying information without client authorization. Because of the secrecy guarantees that they created, these criminal provisions have historically enabled U.S. clients to conceal their Swiss or Luxembourgish bank accounts from U.S. authorities. The secrecy laws not only impact the disclosure of client information but also information related to culpable employees. For example, under Luxembourgish law, BHS was prevented from conducting a systematic review of employees' emails in order to detect information relevant to the investigation.

In or about 2008, Swiss bank UBS AG ("UBS") publicly announced that it was the target of a criminal investigation by the Internal Revenue Service and the Department of Justice and that it would be exiting and no longer accepting certain U.S. clients. On February 18, 2009, the Department of Justice and UBS filed a deferred prosecution agreement in the Southern District of Florida in which UBS admitted that its cross-border banking business used Swiss privacy law to aid and assist U.S. clients in opening and maintaining undeclared assets and income from the IRS. Since the UBS investigation became public, several other Swiss banks have publicly announced that they were or are the targets of similar criminal investigations and that they would likewise be exiting and not accepting certain U.S. clients. These cases have been monitored by banks operating in Switzerland, including BHS, since at least July of 2008.

BHS was aware that U.S. taxpayers had a legal duty to report assets and income to the IRS, and to pay taxes on the basis of all their income, including income earned from accounts that BHS maintained on their behalf. BHS nevertheless opened, serviced, and profited from undeclared accounts belonging to clients that it knew, or should have known, were U.S. taxpayers—including those who BHS knew, or should have known, were likely not complying with their U.S. tax obligations.

III. THE OFFENSE CONDUCT

BHS conducted a cross-border banking business that assisted certain of its U.S. clients in opening and maintaining undeclared accounts in Switzerland, Luxembourg, and Singapore, and concealing the assets and income they held in these accounts from the U.S. Government. BHS knew or had reason to know that some U.S. taxpayers who had opened and maintained accounts at BHS were not complying with their U.S. income tax and reporting obligations.

A. BHS Provided Offshore Private Banking Services that Facilitated Tax Evasion by U.S. Clients

BHS offered a variety of offshore private banking services that it knew or should have known could assist, and did in fact assist, U.S. clients in the concealment of assets and income from the IRS. The most significant services are set forth below, and some are described in more detail in the sections that follow.

BHS offered code name or numbered account services. BHS would allow an account holder to replace his or her identity with a code name or number on bank statements and other documentation sent to the client. BHS charged clients a fee for these services. These services helped U.S. clients to eliminate the paper trail associated with the undeclared assets and income they held at BHS. BHS held 400 coded and/or numbered accounts that were U.S. Penalty Accounts.

BHS used an account in the name of its subsidiary Trinel as an intermediary for a limited number of transfers to or from BHS client accounts. BHS would permit a client to fund his or her BHS account by first sending the assets to an account in the name of Trinel. BHS would then transfer the funds from the Trinel account to the client's BHS account. This structure had the effect of concealing the true destination of funds from records located in the originating

jurisdiction, including in some instances the United States. Further, BHS would allow a client to direct funds out of his or her BHS account through the Trinel account, which had the effect of concealing the source of funds from records located in the recipient's jurisdiction. Until in or about 2006, Trinel was used as an intermediary for client transfers associated with 28 U.S. Penalty Accounts.

BHS employees opened accounts for U.S. clients in the names of offshore companies and entities that purported to be non-U.S. persons exempt from U.S. tax laws. Typically, such offshore entities were located in offshore tax haven jurisdictions such as Panama and the British Virgin Islands ("BVI"). In some cases, clients used non-U.S. corporations or trusts to create ownership layers that were designed to conceal, or had the effect of concealing, assets from the United States. During the Relevant Period, BHS maintained approximately 448 offshore entity accounts that were U.S. Penalty Accounts.

BHS also processed wire transfers or issued checks in amounts of less than $10,000 that were drawn on accounts of U.S. taxpayers or entities, even though BHS knew, or had reason to know, that the withdrawals were made to avoid scrutiny. There were 316 U.S. Penalty Accounts that conducted such structured transactions.

Another such service was hold mail, where BHS would hold all correspondence for a particular client at BHS, rather than send the correspondence to the client, thereby avoiding any correspondence regarding the client's undeclared account being sent to the United States. BHS charged clients a fee for hold mail services. Almost 69 percent of BHS's U.S. Penalty Accounts (approximately 1,135 accounts) used hold mail services.

Up to 2012, BHS employees periodically traveled to the United States to meet with existing U.S. clients for the purposes of opening accounts and servicing those clients' offshore accounts, and, in some instances, to solicit new clients. The U.S. travel, as with all international travel of BHS employees, was approved by relevant executives at BHS and paid for by BHS.

B. BHS Used Offshore Service Providers for Some U.S. Clients and Acted as "Client of Record" for a Panamanian Law Firm for U.S. Clients' Offshore Corporations

In some cases, BHS served as an intermediary between clients and third-party professionals to facilitate the creation of offshore corporations for its U.S. clients. BHS charged its clients a fee for its services in connection with the creation of these corporations, but did not receive any referral fees or payments from third-party professionals. One such third-party professional was a Panamanian law firm (the "Panamanian Law Firm") that provided offshore incorporation and other services to BHS clients, including U.S. clients. Until at least 2013, BHS was listed as the "client of record" in the files of the Panamanian Law Firm, rather than the U.S. client who actually owned the corporation and whose funds were on deposit with BHS.

BHS acted as the client of record on at least 50 U.S. Penalty Accounts at the Panamanian law firm. This required BHS to conduct due diligence, pay invoices, and serve as the point of contact between the client and the Panamanian Law Firm. In this specific role, BHS paid invoices and fees to the Panamanian Law Firm from the clients' accounts. The minimum deposit

amount for investment accounts with the Panamanian Law Firm was, at various times during the Relevant Period, $100,000 or $200,000. In some instances, the offshore corporation used by the U.S. client was established using so-called bearer shares, where the holder of the shares is deemed the owner of the shares.

In February 2010, after the announcement of the UBS deferred prosecution agreement, BHS issued a policy directive ceasing the provision of these intermediary services between third-party professionals and clients seeking to establish offshore companies. Customers could continue to use third-party professionals independently, but BHS would no longer facilitate the creation of any such entity or serve as client of record. When this client of record issue was flagged in a 2012 audit, the Bank's audit division did not advise BHS to close any accounts or to review the related accounts to see if these were hidden U.S. accounts, but simply recommended that the "client of record" in the Panamanian law firm's internal records be corrected.

In addition, BHS employees opened and maintained accounts for U.S.-related clients in the names of trusts held at Hapoalim Fiduciary. During the Relevant Period, BHS maintained approximately nine accounts connected to Hapoalim Fiduciary trusts that were U.S. Penalty Accounts.

C. BHS's Qualified Intermediary Agreement and Efforts to Assist U.S. Taxpayers in Avoiding Identification to the IRS Pursuant to BHS's QI Obligations

In 2001, BHS entered into a qualified intermediary agreement ("QI Agreement") with the IRS. The qualified intermediary regime provided a comprehensive framework for U.S. information reporting and tax withholding by a non-U.S. financial institution with respect to U.S. securities. The QI Agreement was designed to help ensure that, with respect to U.S. securities held in an account at BHS, non-U.S. persons were subject to the proper U.S. withholding tax rates and that U.S. persons holding U.S. securities were properly paying U.S. tax.

The QI Agreement took account of the fact that BHS, like other non-U.S. financial institutions, was prohibited by foreign law from disclosing the identities of account holders. In general, the agreement required that, if a U.S. account holder wanted to trade in U.S. securities and avoid mandatory U.S. tax withholding, BHS would have to either (i) obtain the consent of the account holder to disclose the client's identity to the IRS or (ii) the account holder would have to grant BHS the authority to sell all of the account's U.S. securities (for accounts opened before January 1, 2001) and exclude all U.S. securities from the account (for accounts opened on or after January 1, 2001). The QI Agreement also required BHS to obtain IRS Forms W-9 and to undertake IRS Form 1099 reporting for new and existing U.S. clients engaged in U.S. securities transactions.

BHS established policies and procedures for complying with the QI Agreement. These policies required U.S. clients who held U.S. securities in accounts to either sign an IRS Form W-9 or authorize BHS to sell the U.S. securities in their accounts. BHS's QI forms specifically allowed clients to elect between the two options. These policies also required foreign corporations holding U.S. securities to sign IRS Forms W-8BEN to establish both the foreign status and beneficial owner of the account. Existing U.S. clients and foreign corporations who

refused to sign IRS Forms W-9 or W-8BEN were to have their accounts blocked from transacting in U.S. securities. These policies further barred the opening of any new accounts holding U.S. securities if the U.S. client or foreign corporation refused to sign an IRS Form W-9 or Form W-8BEN.

Notwithstanding the QI Agreement and its policies, BHS continued to service U.S. clients without disclosing their identity to the IRS and without considering the impact of U.S. criminal law on that decision. In certain cases, BHS failed to adhere to the requirements of BHS's QI Agreement with the IRS and BHS's own QI policies by (i) not identifying clients holding U.S. securities as U.S. persons, (ii) permitting U.S. clients who had not provided BHS with the proper IRS Forms W-8BEN and/or W-9 to continue trading in accounts holding U.S. securities, and (iii) failing to timely address QI-related compliance deficiencies in U.S. client accounts holding U.S. securities, including failing to comply with the requirements regarding proper documentation for opening and maintaining accounts holding U.S. securities.

Certain BHS relationship managers and supervising employees allowed some U.S. clients to create and open accounts in the name of sham offshore entities, non-U.S. nominees, and insurance companies. BHS opened and maintained client accounts for known U.S. clients using non-U.S. forms of identification, which enabled U.S. taxpayers to avoid being identified as U.S. persons, in violation of BHS's internal policies and the QI Agreement. In some cases, relationship managers advised U.S. clients to use their non-U.S. passports to open accounts instead of their U.S. passports. In connection with some of these accounts, certain BHS employees accepted and included in BHS's account records IRS Forms W-8BEN (or BHS's substitute forms) provided by the directors of the offshore companies that falsely represented under penalty of perjury that such companies were the beneficial owners, for U.S. federal income tax purposes, of the assets in the accounts. These false Forms W-8BEN were obtained at the same time as the Swiss Forms A that accurately and truthfully represented the true beneficial owners of the assets in the accounts.[3]

D. Additional Methods And Means Of Concealment

1. Back-To-Back Loans

During the Relevant Period, BHS offered and serviced back-to-back loans that in certain cases were used by U.S. taxpayers to access in the United States their funds held in offshore accounts while continuing to conceal their assets and evade their U.S. tax obligations. A "back-to-back loan" was a loan offered by BHBM's U.S. branches to U.S. customers that was secured by funds in an offshore BHS account, generally held by the same U.S. beneficial owner (the "pledge account"). During the Relevant Period, accounts at BHS secured or collateralized approximately 51 back-to-back loan facilities issued by BHBM's U.S. branches with an approximate value of $162.3 million. Certain BHS employees knew or should have known that back-to-back loans allowed U.S. customers to enjoy the economic benefits of the funds in the offshore accounts without directly repatriating the funds or creating a paper trail that could potentially disclose the existence of the undeclared accounts to U.S. authorities.

[3] A "Form A" is used by Swiss banks to declare the identity of the true beneficial owner of a bank account, along with the owner's address, date of birth and nationality.

Bank employees who prepared the loan documents and approved the back-to-back loans were aware in some cases that the borrower and owner of the pledge account were the same person. BHS employees assisted customers in circumventing BHBM's U.S. branch policies requiring disclosures of the pledgors of back-to-back loans either by (a) using a trust account held at BHS as the pledge account, as a result of which the name of the trust account, rather than the trust beneficiary, was disclosed to the U.S. branch issuing the loan; or (b) maintaining the pledge account in the name of a non-U.S. relative of the U.S. customer who was the actual beneficial owner of the funds in the account and granting the U.S. customer a power of attorney over the pledge account, as a result of which the name of the account holder, rather than the beneficial owner, was disclosed to the U.S. branch issuing the loan.

For example, between approximately 2002 and December 2008, a family of U.S. citizen and resident customers used a back-to-back loan facility issued by one of BHBM's U.S. branches and secured by assets in the U.S. clients' Hapoalim Fiduciary trust account held at BHS in order to conceal their ownership of the assets while repatriating the assets to the United States. The loan facility was terminated in 2009, and BHS closed the accounts in March 2010.

In 2008, following the announcement that Mizrahi Tefahot Bank Ltd. ("Mizrahi Bank") had entered into a Cease & Desist Order with the Federal Deposit Insurance Corporation and California Department of Financial Institutions in connection with Mizrahi Bank's practices regarding, among other matters, back-to-back loans, BHBM's U.S. branches reexamined their own back-to-back loan practices and determined that the U.S. files of some loans secured by accounts at BHS did not contain sufficient information concerning the collateral accounts. Thereafter, BHBM's Miami branch amended its policies to require bankers to identify all guarantors on loan accounts, and to require anti-money-laundering compliance personnel to ensure that the Miami branch obtained descriptions of the purpose of the loan, source of repayment, source and location of the collateral, parties involved in the loan, and tax and financial statements related to the borrower (as applicable). BHS did not, however, consistently respond to the Miami branch's requests for information needed to satisfy its policies. The number of back-to-back loans involving collateral held at BHS decreased following the introduction of post-2008 policy enhancements, and BHBM and BHS undertook enhanced scrutiny of the underlying business reasons for requested back-to-back loans.

2. Insurance Wrappers

BHS also opened and maintained insurance wrapper accounts for clients. Insurance wrapper accounts are accounts held in the names of insurance companies, but funded with assets transferred to the accounts by the beneficial owners of insurance products at the insurance companies (the "policy holders"). These accounts were typically managed by external asset managers for the ultimate benefit of the policy holders, often through powers of investment that were given by the insurance companies to the external asset managers. BHS treated the insurance company as the beneficial owner, and did not have internal forms identifying the policy holders as the actual beneficial owners of such accounts. The lack of such information prevented BHS from thoroughly disclosing such accounts to the Department.

During the Relevant Period, BHS maintained 17 such accounts for the benefit of U.S. clients with a total value of more than $62 million. Ten of these accounts were held in BHS-Singapore, and all were connected to the same relationship manager. Insurance wrapper accounts were commonly used during the Relevant Period as a means of enabling U.S. taxpayers to conceal their assets and income from the IRS, and in evading their U.S. tax obligations.

E. Certain BHS Senior Executives, Board Members, and Employees Directly Aided and Abetted U.S. Tax Evasion

1. Senior Executive-1

In the early 1990s, a then-senior officer of BHS who later became a member of the BHS Board of Directors ("Senior Executive-1") introduced to BHS one of his long-time U.S. citizen and resident clients ("Client-1"), whom Senior Executive-1 had serviced at his prior Swiss bank. With the assistance of Senior Executive-1, Client-1, a Certified Public Accountant, opened an undeclared account at BHS-Switzerland in the name of a Liechtenstein foundation, which had a maximum value of more than $4 million. In coordination with Client-1, the Liechtenstein directors of the Liechtenstein foundation instructed Senior Executive-1 to transfer U.S. securities and funds in the Liechtenstein foundation account to a second undeclared BHS account, held by a non-U.S. person who was an Israeli friend and nominee for Client-1 ("the Nominee Account"). Client-1 and Senior Executive-1 transferred approximately $2 million to the Nominee Account.

Senior Executive-1 and Client-1 worked together to surreptitiously repatriate funds to the United States from the Nominee Account. Following the transfers to the Nominee Account, and again at the direction of Senior Executive-1, BHS issued checks from the Nominee Account in amounts that were the same or similar to the amounts of the transfers from the Liechtenstein foundation account, with the checks made payable in the name of a second nominee, the Swiss lawyer who had originally referred Client-1 to Senior Executive-1. Between 2002 and 2011, BHS issued a total of 240 checks in amounts ranging from $3,000 to $9,900 (and totaling approximately $2 million) from the Nominee Account for the benefit of Client-1. Client-1 also withdrew cash from the account during his visits with Senior Executive-1 in Switzerland to review his account.

Client-1 picked up certain of the checks in person at BHS-Switzerland's headquarters in Zurich, while BHS mailed others to a post office box held by a third nominee for Client-1 in the United States. Adding another layer of secrecy, Senior Executive-1 enclosed some of the checks in greeting cards before mailing them to the post office box in the United States. By 2009, BHS compliance personnel had flagged certain of the checks as potentially problematic and sought additional information regarding the relationship between Client-1 and Senior Executive-1. However, there is no indication that BHS personnel investigated this matter further or took any other actions, and the flow of funds continued until December 2011, more than two years after the announcement of the UBS deferred prosecution agreement. In 2012, BHS closed Client-1's accounts and transferred over $1.8 million to an account with another Israeli bank in the name of Client-1. Client-1 eventually entered the IRS's Offshore Voluntary Disclosure Program.

2. Senior Executive-2

Senior Executive-2, a then-member of BHS's Board of Directors, served as a director of an offshore corporation and the nominee owner of an undeclared account controlled by a relative who was a U.S. citizen and resident ("Client-2"). In late 2004, Senior Executive-2 contacted a trust company in Liechtenstein to purchase an offshore shelf company incorporated in St. Vincent and the Grenadines that would be beneficially owned by Client-2. The offshore corporation was created in December 2004 and Client-2 opened an account in the name of the offshore corporation at Union Bancaire Privée ("UBP"), another Swiss bank.

When UBP stopped doing business with U.S. clients around 2009, Senior Executive-2 approached BHS's compliance department and sought to move Client-2's account to BHS. In March 2009, Client-2, with the assistance of Senior Executive-2, opened an account at BHS-Singapore in the name of the offshore corporation. Senior Executive-2 was listed as the sole director of the corporation and the sole signatory on the account. BHS compliance employees allowed the account to be opened despite a BHS policy barring the opening of accounts for U.S. persons. According to BHS's Know Your Customer ("KYC") documentation, Senior Executive-2 and Client-2 "are not entirely happy with the current situation in Switzerland. They have lost their confidence and trust in the regulations of Switzerland and therefore they are looking into Singapore as an alternative." Senior Executive-2 signed a BHS-Singapore QI form that falsely stated, "The Undersigned Account Holder [the offshore corporation] hereby declares that it is the beneficial owner according to U.S. tax principles to the assets and income to which this form relates." This is inconsistent with BHS-Switzerland's own beneficial ownership form, which included Client-2's name, U.S. residential address, and U.S. nationality. Client-2 periodically called Senior Executive-2 to provide account instructions related to the BHS-Singapore account. Senior Executive-2 ultimately informed Client-2 that he should become tax compliant and advised Client-2 to enter the IRS Offshore Voluntary Disclosure Program, which he did in November 2011. The account was closed shortly thereafter.

3. Senior Executive-3

In May 2009, another then-BHS senior officer ("Senior Executive-3") opened an account for a friend who was a U.S. citizen and resident ("Client-3"), shortly after BHS had implemented a written policy requiring new U.S. clients to sign IRS Forms W-9. Client-3 signed the account opening forms in the United States during a meeting with Senior Executive-3. Thereafter, BHS compliance personnel indicated that the account could not be opened without an IRS Form W-9. In response, Senior Executive-3 requested that BHS's compliance department make an exception to this requirement because of Senior Executive-3's personal relationship with Client-3. The compliance department granted the exception and BHS opened the account in May 2009 without submission of an IRS Form W-9. The account was funded by a transfer of approximately $300,000 from Clariden Leu, another Swiss bank. In 2012, BHS closed the account because Client-3 was known to be a U.S. person and no IRS Form W-9 was on file. At closing, Client-3's relationship manager provided the client approximately $21,000 and approximately 5,000 Swiss francs in cash from Client-3's account and transferred the remaining approximate $140,000 as follows: (1) 79,150 Swiss francs to a Swiss jewelry store, and (2) more than 62,000 euros to a Swiss rug merchant.

4. Senior Executive-4

In 2002, BHS opened the first of a series of accounts for a U.S. client ("Client-4") who had allegedly received a large amount of money from a business sale in the Republic of Georgia. Client-4 presented a U.S. passport to BHS and was identified as a U.S. citizen in BHS's records. In August 2002, Senior Executive-4 approved the opening of an account for Client-4 in the name of a BVI corporation. Over $72 million was sent to Client-4's account at BHS from the personal account of an alleged cousin and business partner of Client-4 (the "Cousin"), despite the fact that no due diligence as to the source of the funds had yet been done. Client-4 sent a letter dated five days after the wire transfer, claiming that he was the beneficial owner of the funds and that the funds were the result of a bona fide transaction. He stated that he could not provide copies of any transaction documents due to "business secrets" concerns, but he would allow two senior BHS executives, Senior Executive-1 and Senior Executive-4, to review the documents at his home on the Mediterranean. The meeting at Client-4's home occurred 14 days after BHS had received the funds and deposited them into the account controlled by Client-4. Ultimately, following the meeting and due diligence, BHS treated Client-4 as the beneficial owner, even though the funds came from a personal bank account in the name of the Cousin, who had significant connections to Russia and Georgia.

In addition to BHS, Hapoalim Fiduciary was involved in the management of the account and served as directors of the BVI corporation for Client-4. In October 2002, Hapoalim Fiduciary filed a "Money Laundering Disclosure Report" related to the account. Later in October 2002, a Hapoalim Fiduciary employee emailed Senior Executive-4 to say it was his view that "we still haven't undertaken sufficient due diligence" on Client-4, "especially in view of his apparent relationship with [the Cousin]." Following this email, BHS undertook further due diligence on Client-4 and the Cousin. The total assets of the 14 accounts related to Client-4 reached a combined maximum balance of at least $150 million.

While highly unusual, Senior Executives-1 and -4 acted as Client-4's relationship managers, with Senior Executive-1 taking the primary role. According to the May 3, 2004 minutes of BHS's Money Laundering Committee, one of the policies for approving transactions above 100,000 Swiss francs by Politically Exposed Persons was not followed, noting that "[t]he relationship to this client is a special one, because [Senior Executives-1 and -4] are in direct contact with" Client-4. Both served on the BHS credit committee, which was tasked with approval of certain credit issues related to the Client-4 accounts.

After a foreign government initiated an investigation in 2005 and requested documents related to one of Client-4's accounts, the Swiss government informed BHS that in light of information received from the foreign country, there was "reason to suspect that the indications regarding the identity of the beneficial owners listed in the forms A could be partially or totally inaccurate." BHS also learned in 2005 of a second foreign government investigation. Despite this, BHS continued its banking relationship with Client-4, although the AUM of Client-4's accounts significantly decreased and certain of the accounts were frozen for periods of time. For example, after a meeting in September 2006, a BHS employee sent an email to a representative of Client-4 that stated, "We are looking forward to a further successful and beneficial business

relationship with you." No one in management advised BHS's Board of Directors of the fact that two foreign countries were investigating accounts related to Client-4.

In 2008, BHS became aware that a relative of the Cousin filed a lawsuit against Client-4. In December 2008, Client-4 requested an "off-the-shelf offshore company with an active Hapoalim account." Instead of closing, freezing, or investigating the account group, Senior Executive-1 and another BHS senior manager endeavored to help Client-4 establish a "new BVI company" by providing the names of currently available BVI companies; ultimately Client-4 did not establish a new offshore entity. In November 2009, BHS received a letter informing it that a foreign court had issued a freezing order on assets controlled by Client-4. It was not until April 2010 that BHS's Anti Money Laundering Committee decided to terminate BHS's business relationship with Client-4.

In March 2015, a BHS employee who was reviewing accounts sent an email to the compliance department noting that one of Client-4's accounts was opened in 2003, and that in 2008 the domicile listed for compliance purposes was changed from the United States to the United Kingdom. The BHS employee asked, "Should he, or any other related accounts, be included in our US list?" The compliance department responded that BHS had "actual knowledge" that the account was not controlled by Client-4 and was therefore not a U.S. related account.

5. Senior Managers-1 and -2

A U.S. client ("Client-5") held assets at BHS through accounts held in his own name and the names of non-U.S. relatives. The high balance of the various accounts was over $28 million. The relationship managers for this client knew that Client-5 lived and worked in the United States and that he was a U.S. citizen, and different BHS personnel, including Senior Executive-3, visited him in the United States. In 2008, Senior Manager-1, then a relationship manager (who was later a branch manager), suggested that Client-5 restructure the trust, with the non-U.S. mother of Client-5 listed as the grantor of the trust. The trust was created and managed by Hapoalim Fiduciary. By using this trust structure, Client-5's control of the account was concealed. In response to an October 2007 alert from BHS's transaction monitoring system, Senior Manager-1 noted, in regard to a related account owned by Client-5, that Client-5 maintained a business in the United States and transferred assets to BHS that he did not want to declare for tax purposes. Senior Manager-1 also noted that Senior Executive-3 approved of the trust structure of the accounts.

In 2013, the structure of the accounts was again changed, moving from the trust structure to an account in the name of the non-U.S. mother of Client-5. Senior Manager-1 prepared KYC documents in March 2013 indicating that the funds in the trust account originally came from the mother's late husband, which Senior Manager-1 knew to be false. In August 2016, another senior BHS employee (Senior Manager-2) had several telephone calls with Client-5's non-U.S. brother, who disclosed that although he held the power of attorney on the account, Client-5 had the capacity to make decisions regarding the funds as 90% of the assets in the account actually belonged to Client-5. This call was not recorded in BHS's system for logging customer communications. In addition, Senior Manager-2's written records of calls with these clients did

not accurately record the substance of the calls. In the entry she made a few days after the phone call, she stated that there was no U.S. person on the account, despite the prior statements of Client-5's brother and the wealth of documentary evidence in the bank files to the contrary. Client-5 eventually entered the IRS's Offshore Voluntary Disclosure Program.

F. Other BHS Employees Assisted Clients in Concealing their Assets

1. Example 1

Between approximately 2002 and December 2008, a family of U.S. citizen and resident clients ("Client-6") routinely transferred the interest accrued on deposits in a trust account to a non-U.S. person relative's account at BHS. The non-U.S. person relative then transferred the funds to Client-6 in the United States. In September and October 2006, a BHS compliance employee inquired about the economic rationale for these arrangements, and a BHS relationship manager suggested closing the trust account, but the account was not closed. In connection with a February 2007 compliance alert, a relationship manager explained that the non-U.S. person relative "forwards interest received in another account to make less conspicuous that his relative has an account in CH [Switzerland]." A BHS compliance officer responded, "The answer fits the fact. From this account to the relative and the to heir [sic] account in the US. Fine." In a different 2007 compliance alert, the relationship manager further noted that Client-6 engaged in these transfers for "tax reasons." BHS closed Client-6's accounts in March 2010.

2. Example 2

In 2009, at a U.S. person's request ("Client-7"), a BHS relationship manager opened an account at BHS-Luxembourg in the name of Client-7's non-U.S. wife, who granted Client-7 a power of attorney over the account. The primary source of the account assets was Client-7's business savings, and KYC records identified Client-7 as the client, but stated that he wanted the account in his wife's name "as he does not want to be the principal account holder for personal reason [sic]." The relationship manager opened the account in the wife's name and failed to obtain an IRS Form W-9 from Client-7.

IV. POLICIES AND PRACTICES CONCERNING U.S. CUSTOMERS

In early May 2008, the fact that UBS was being investigated by the Department of Justice became public. UBS disclosed that it was being investigated for, among other things, assisting U.S. taxpayers with evading their taxes. In July 2008, UBS announced that it was closing its U.S. cross-border banking business. Thereafter, several other Swiss banks publicly announced that they were the targets of similar criminal investigations and that they likewise would be exiting their U.S. cross-border businesses and not accepting certain U.S. clients.

While BHS took no systematic or institutional efforts to solicit U.S. clients from UBS or other Swiss banks, between August 2008 and December 2012, it accepted transfers from UBS and other Swiss banks and opened a number of new accounts of U.S. citizens or residents who had not previously held accounts with BHS. There were 63 U.S. Penalty Accounts at BHS that

received such transfers from Swiss banks, 37 of which were accounts opened by new customers.[4]

In some cases, BHS personnel, including the compliance unit, failed to take appropriate steps to prevent certain U.S. clients leaving Swiss banks from transferring funds to BHS in order to continue their evasion of U.S. tax obligations. For example, in August 2008, a client who had an existing BHS-Switzerland account closed his UBS account and transferred the account assets to BHS-Switzerland. The assets under management for this account reached a maximum of $1,187,030 in September 2008. Account records indicate that the relationship manager for the account was aware that, in an effort to avoid sending Society for Worldwide Interbank Financial Telecommunication ("SWIFT") messages, the client transferred the assets in Swiss francs, rather than in U.S. dollars.

Apart from its obligations under the QI Agreements with the IRS and the internal regulations it introduced to implement them, prior to the public announcement of the UBS investigation, BHS did not have specific cross-border tax policies for U.S. clients that would have enabled it to ensure the tax compliance of these clients.

Following the announcement of UBS's settlements with the Department of Justice and the Securities and Exchange Commission, and subsequent pressure from U.S. clients to open offshore accounts at BHS, in April 2009, BHS management issued a written directive prohibiting the opening of new accounts for U.S. residents without an IRS Form W-9. Existing U.S. accounts were not covered by the initial policy; furthermore, U.S. non-resident citizens were still permitted under the initial policy to open new accounts. BHS issued its first policy to deal with existing U.S. accounts on December 31, 2009. The policy stated that BHS would cease to provide securities services to U.S. residents, and also would stop the disparate treatment of U.S. resident and non-resident citizens for compliance purposes.

Certain BHS employees opened accounts in violation of these policies. For example:

- Between May and September 2009, a relationship manager at BHS-Singapore opened at least four accounts with beneficial owners known to be U.S. persons without obtaining IRS Forms W-9 from those clients.

- In September 2010, a relationship manager at BHS-Switzerland opened an account for the daughter of existing clients. At the account opening, the daughter provided a Peruvian address and passport, and did not provide an IRS Form W-9. According to the daughter, an employee at BHBM's representative office in Chile instructed the daughter to provide her Peruvian passport instead of her U.S. passport. In June 2012, the client told her relationship manager at BHS-Switzerland, whom BHS had hired from UBS in 2010, that the client's father and the representative office employee hid her U.S. citizenship. The relationship manager suggested that the client use a trust in order to continue to conceal her U.S. citizenship. Two months later, the client asked the relationship manager to forget about their last conversation, and the relationship manager confirmed that

[4] This figure does not include Jersey or Georgetown, due to a lack of data.

this meant the client was only a Peruvian citizen, which the client then confirmed. The relationship manager apparently did not raise any further questions about the prior conversation regarding the client's U.S. status. Ultimately, the client, unprompted by BHS, provided an IRS Form W-9 in October 2013.

Although there was no formal policy, by 2010, BHS compliance officers advised BHS relationship managers of the need to inform existing U.S. clients that they must declare their accounts by providing IRS Forms W-9 in order to maintain their accounts with BHS; however, not all employees did so.

Although BHS was not required to report under FATCA prior to 2014, it began implementing the policies and systems required for FATCA reporting in 2011. In July 2011, BHBM implemented a group-wide policy that specifically prohibited employees from providing advice to U.S. clients aimed at avoiding FATCA requirements. But these efforts were inadequate. Compliance and information technology weaknesses hindered BHS's ability to identify all U.S. accounts. For example, after the third quarter of 2011, BHS compliance reported that in preparation for FATCA, three students reviewed data in the Swiss branches looking for U.S. indicia and that the same was done in Luxembourg with students. This data review did not include a review of hard files or the computerized customer relationship manager system. A complete file review was not commenced until 2015 and was limited to accounts valued over $1 million. As another example, Bank Audit conducted a review of BHS's Geneva branch in 2012. BHS had an account opening checklist that was to be used to confirm the receipt of all required documents; Audit took a sample of 20 accounts and determined that not a single account complied with this procedure.

In 2012, BHS introduced a policy with respect to the exiting of U.S. clients. Under the policy, BHS permitted U.S. clients to close their accounts through wire transfers or checks, subject to certain restrictions. Absent approval by BHS's compliance department, clients could not transfer funds to accounts in non-FATF[5] jurisdictions, and, without an IRS Form W-9 on file, could not transfer funds internally at BHS. Customers could transfer funds externally only to an account in the name of the U.S. person. BHS nevertheless closed some U.S. client accounts via means that were inconsistent with this policy.

BHS was slow to assess its U.S. client business and risks. In response to a document that discussed the UBS investigation, Senior Executive-3 sent an email in July 2008 to other senior executives of BHS and BHBM stating that "Swiss secrecy can only be overcome with Swiss judicial support which requires EVIDENCE of a crime or tax fraud (suspicion of tax avoidance is not enough)." In March 2009, just after the announcement of the UBS deferred prosecution agreement, a then-BHS Board Member ("Board Member-1") suggested to Senior Executives-3 and -4 that BHS do a review of the client base for client with "US links" and hire a U.S. law firm with experience in the area to assist. Board Member-1 further observed, "We need to have a zero tolerance policy in this respect. It will be no defense with the US authorities that we have only a small number of US clients if one high profile case is detected (which we all assume do

[5] FATF is the Financial Action Task Force (on Money Laundering), an intergovernmental organization founded to develop policies to combat money laundering and terrorism financing.

not exist)." BHS management did not conduct such a review at that time.

BHS management did not provide statistical information regarding its U.S. client business to the BHS Board of Directors until March 2010, when it reported that there were 782 "US persons" with accounts that had assets under management of $785.6 million (when, in fact, there were 849 such persons with approximately $2.4 billion). Thereafter, certain then-members of BHS management failed to accurately determine the number of U.S. accounts at BHS and therefore reported to the BHS Board of Directors numbers of U.S. accounts at BHS that were significantly lower than the actual number of such accounts. Such underreporting led Board members to believe that BHS had a small number of U.S. accounts and therefore the issue posed little risk to BHS.